

SIDEWALK CAFÉ/STREET PATIO MAINTENANCE AGREEMENT

THE STATE OF TEXAS
COUNTY OF TRAVIS

KNOWS ALL BY THESE PRESENTS:
TABC Permit No. (insert TABC permit No.)

The City of Austin, a home-rule municipal corporation located in Hays, Travis, and Williamson Counties, State of Texas, (“City”) acting through its duly authorized agent the City Manager or designee, who for purposes of this Agreement is the Director of Transportation Department, City of Austin, (“the City”), and (location), a LLC, (“Permit Holder”), enter into this Maintenance Agreement (“Agreement”) effective upon final signature under the terms and conditions set forth below.

WHEREAS, Permit Holder desires to obtain a revocable and non-exclusive Permit from the City to use and occupy a portion of (street name), to permit a sidewalk or parking space encroachment, referred to as a “Sidewalk Cafe”, for the purpose of using sidewalk area and/or on-street parking spaces for the service of food and beverages.

WHEREAS, the City is willing to grant Permit Holder a revocable Maintenance Agreement for such purpose, under the terms and conditions of this Agreement.

NOW, THEREFORE, the City and Permit Holder agree as follows:

1. **Premises.** The City grants Permit Holder the right to use the “Right-of-Way”, as shown on the attached and incorporated **Exhibit A** (“Sketch”), at (“Permitted Property” or “Premises”) located at (location).

The City makes this grant solely to the extent within right of way adjacent to and within the span of the façade of the permitted premises or property.

2. **Terms of Payment.** Permit Holder agrees to pay the application fee of \$100 and an annual fee of (insert total fees) payable to the City immediately upon the execution of this Agreement.
3. **Term.** This Maintenance Agreement shall expire on (date of expiration).
4. **Purpose and Conduct of Use:** The Premises may be occupied and used by Permit Holder during the term of this Agreement for the sole purpose of constructing, installing, operating, maintaining and repairing a temporary sidewalk cafe for food and beverage service, consisting of decking, fencing, tables, chairs and other necessary facilities as described and depicted in Exhibit “A”, attached hereto and incorporated herein by reference. In its use and occupancy of the Premises, Permit Holder shall strictly comply with the following requirements:
 - a. Furnishings shall not extend or overhang outside of the permitted area, constitute a danger to the health or safety of a patron or the public, violate any other ordinance that governs the use of public right of way, or interfere with or obstruct the public right of way.

- b. The permitted encroachment must maintain accessibility in accordance with the American with Disabilities Act (ADA) and Texas Accessibility Standards (TAS) by maintaining at least 6 feet of access at all times.
- c. Litter and recycle containers shall be provided, and the area shall be cleaned of all litter, refuse, and spills after each day's operation by the Permit Holder and at the Permit Holder's expense.
- d. Hours of operation shall be in conjunction with establishment business hours, Sunday through Saturday.
- e. No equipment for sound amplification shall be permitted within the cafe area.
- f. Permit Holder shall not place or permit any signs or banners on the premises.
- g. No utility connections shall be installed on the Premises.
- h. Permit Holder shall not place or permit any hazardous materials in or about the Premises.
- i. Placement of necessary temporary facilities, as required by the Health Department must be shown on Exhibit A
- j. Sidewalk café or Parklet café must not be affixed by more than one bolt per corner in order to affix any surrounding fencing.

5. Street Patio Improvements. Permit Holder shall have the right to install on the Premises parklet patio improvements consisting of decking, fencing, tables, chairs and other necessary facilities as described and depicted in Exhibit "A", attached hereto and incorporated herein by reference. Except as specifically allowed by this agreement, Permit Holder shall not place, build, expand or add to any structure or other items on the Premises. Permit Holder shall be responsible at its sole expense for the construction, installation, operation, maintenance, repair and removal of any improvements to the Premises. Permit Holder acknowledges that the area covered by this permit constitutes a portion of a public right-of-way and agrees that use herein permitted shall be done in compliance with all codes, ordinances and regulations.

6. Conditions.

- a. **Repair or Relocate Existing Facilities.** Permit Holder must pay all costs required to repair damage to or relocate existing Facilities, which are damaged or destroyed or need to be relocated as a result of activities under this Agreement by, or on behalf of, Permit Holder.
- b. **Remove or Modify Improvements.** Permit Holder agrees to pay all costs required to remove or modify any Improvements now existing or to be replaced if the City determines that the Improvements need to be removed or modified. If Permit Holder voluntarily removes all Improvements, Permit Holder must provide at least 30 days written notice to the adjoining landowners that are burdened by the Covenant. At the termination of this Maintenance Agreement, at its sole expense, will remove all

improvements made to the Premises and restore the public right of way to its original condition.

- c. **Maintenance.** Permit Holder shall maintain the Permitted Property by keeping the area free of debris and litter on an ongoing basis. Further, Permit Holder must properly maintain all Improvements. After any installation or repair of utilities, traffic control devices, or streetlights is complete, Permit Holder must repair or replace any damaged Improvements such that pedestrian safety and accessibility within the Right-of-Way is reestablished within 48 hours. Permit Holder also agrees that upon termination of this agreement, that Permit Holder will remove all fixtures from the public right of way and return it to its previous condition at Permit Holder's own expense. Permit Holder further agrees that this permit shall not be transferable. See attached list that details maintenance duties.

7. **Right of Entry.** Notwithstanding any other provision of this agreement to the contrary, the City shall at all times have the right to enter the Premises to inspect, improve, maintain, alter or utilize the Premises in any manner authorized to the City. If such entry requires disturbance of any items placed upon the Premises under this Agreement, the City shall not be required to repair or replace any such disturbance. In the Exercise of its rights pursuant to this Agreement, Permit Holder shall avoid any damage or interference with any City installations, structures, utilities or improvements on, under, or adjacent to the Premises.
8. **Compliance.** If Permit Holder fails to comply with its obligation under this Agreement, the City may at its sole discretion terminate this Agreement as provided herein or take measures as it determines necessary to bring the Premises into compliance with the terms hereof, and the cost of any such measures shall be paid by Permit Holder.
9. **Insurance.** Permit Holder shall hold harmless the City and its officials, agents, and employees against any expense or liability for personal injury, death, or damage to any property wherever situated, arising from Permit Holder's use of any portion of the above described right-of-way. Permit Holder shall procure, prior to use of any portion of the right-of-way under this Maintenance Agreement, and maintain throughout the term of this Agreement, (a) Commercial General Liability Insurance with a combined single limit of not less than \$500,000 and (b) \$1,000,000 insurance, so long as Permit Holder serves alcohol at its business, for each occurrence for bodily injury and property to include a \$500,000 aggregate for products/completed operations coverage. Such insurance shall be issued by an insurer acceptable to the City. A certificate of insurance shall be delivered to the Director of the Austin Transportation Department before right-of-way space is occupied under the terms of this Permit, and thereafter as required under this agreement. Permit Holder shall be responsible for deductibles stated in the policies. All deductibles shall be disclosed on the required certificate of insurance. Actual losses not covered by insurance as required by this Permit shall be paid by Permit Holder. Permit Holder shall obtain an endorsement to each affected policy:

- a. Naming the City of Austin, P.O. Box 1088, Austin, Texas 78767 as an Additional Insured.
- b. Obligating the insurance company to notify the Director of the Austin Transportation Department of the City of Austin, P.O. Box 1088, Austin, Texas 78767 of any non-renewal, cancellation, or material changes in coverage.
- c. Providing that the “other” insurance clause shall not apply to the City where the City of Austin is an additional insured showed on the policy. It is intended that policies required in this agreement, covering both the City and Permit Holder, shall be considered primary coverage as applicable.

The City reserves the right to review insurance requirements of this section during the term of this Agreement and to make reasonable adjustments to insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or the Permit Holder, or some other reasonable basis.

The City shall be entitled, upon request and without expense, to review certified copies of policies, guidelines, and all endorsements thereto and to make any reasonable requests for deletion or revision or modification of particular policy terms, guideline terms, conditions, limitations or exclusions, except where policy or guideline provisions are established by law or regulation binding upon either the parties hereto or the underwriter of any such policies.

Permit Holder must ensure that the Director of Austin Transportation Department receives written notice of any cancellation, non-renewal, reduction, restriction or other limitation of the insurance policy. This notice is requested to be provided 30 days before any of the above actions are taken on the insurance policy. A substitute certificate of insurance evidencing equivalent substitute insurance must be received by the Director of Transportation Department prior to the date shown on the notice. All certificates must affirmatively show that the City of Austin is named as an additional insured.

11. **Bond.** The Permit holder must provide the City with a cash or surety bond sufficient to cover the cost to the City of a public utility to remove the sidewalk café, if necessary. A \$5,000.00 bond is required if no bolts are secured in the Right-of-Way. A \$10,000.00 bond is required if a single bolt per corner is secured in the Right-of-Way. \$10,000.00 bonds with a signature other than the power of attorney require a current resolution of corporate authority for all types of companies.
12. **Termination by City.** Subject to prior written notification to Permit Holder, this Agreement is revocable by the City if:
 1. The Improvements, or a portion of them, interfere with the City’s rights in the right-of-way;
 2. Use of the right-of-way area becomes necessary for a public purpose;
 3. The Improvements, or a portion of them, constitute a danger to the public, which the City deems not to be remediable by alteration or maintenance of such Improvements;

4. Despite 30 days written notice to Permit Holder, maintenance or alteration to the Improvements of an identified issue has not been made;
5. Permit Holder fails to comply with the terms and conditions of this Agreement including, but not limited to timely payment of the annual fee.
6. Permit Holder's failure to provide Certificates of Insurance and Surety Bond to the City.
7. Permit Holder's failure to properly and timely maintain the Improvements as set out in this Agreement.
8. Permit Holder's failure to repair or replace any damaged Improvements such that pedestrian safety and accessibility within the right of way is reestablished within 48 hours.

13. Assignment. Permit Holder shall not assign sublet or transfer its interest in this Agreement under any circumstances.

14. Notice. Notice may be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand delivered or on the third day after deposit if sent certified mail.

This agreement shall take effect upon the acceptance and satisfaction of the terms hereof by the named applicants for this agreement, as indicated by his/her signature hereon.

PERMIT HOLDER:

(NAME)

SIGNATURE OF APPLICANT

Name: _____

Title: _____

THE PERSON KNOWN TO ME TO BE THE ABOVE SIGNED APPLICANT IS DULY SWORN BY ME AND STATES UNDER OATH THAT HE/SHE HAS READ THIS APPLICATION AND THAT ALL FACTS THEREIN SET FORTH ARE TRUE AND CORRECT.

SWORN TO BEFORE ME, THIS _____ DAY OF _____, 20____

NOTARY PUBLIC-STATE OF TEXAS